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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/043,908 | 01/11/2002 | Robert Russo | 2103461-991100 | 7256 |

26379 7590 06/09/2003

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EXAMINER

SMALLEY, JAMES N

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 3727 | |

DATE MAILED: 06/09/2003

Q

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|-----------------|--------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/043,908 | RUSSO ET AL. |
| Examiner | Art Unit | |
| James N Smalley | 3727 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-54 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 2-5, 9-13, 17, 20-23, 31, and 33-54 is/are allowed.
- 6) Claim(s) 1,6-8,14-16,28-30 and 32 is/are rejected.
- 7) Claim(s) 18-19 and 24-27 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

| | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Amendment dated 19 May 2003 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 6-8, 28-30 and 32 are rejected under 35 U.S.C. 102(e) as being anticipated by Waller '390.

Waller '390 discloses a Lid for a Beverage Container comprising:

(cl. 1) a top wall having a generally circular periphery, an annular sidewall (28) downwardly depending from the top wall periphery, the lid including a drinking opening/groove (60) formed adjacent to the periphery, a regulator valve formed under the drinking opening, the regulator valve including: a first sidewall structure downwardly depending from the lid adjacent to the drinking opening and terminating in a first bottom wall, and a plurality of apertures/openings (20) formed in at least one of the first sidewall structure and the first bottom wall, wherein any of the plurality of apertures formed in the first sidewall structure are positioned in an opposing manner,

(cl. 7) wherein the drinking opening is formed in the top wall,

(cl. 8) wherein the annular sidewall includes an annular recess for receiving a rim of the cup in a liquid tight manner.

Regarding claims 28-30 and 32, Waller '390 discloses a Lid for a Beverage Container comprising:

a top wall having a generally circular periphery, an annular sidewall (28) downwardly depending from the top wall periphery, the lid including a drinking opening/groove (60) formed adjacent to the periphery, a regulator valve formed under the drinking opening, the regulator valve including:

a sidewall structure downwardly depending from the lid adjacent the drinking opening, and a plurality of apertures formed in the sidewall structure and positioned thereon in an opposing manner,

(cl. 29) a wave-breaker recess formed in the top wall having a sidewall that extends downwardly, wherein the wave-breaker recess sidewall includes a first portion facing toward the regulator valve and a second portion facing away from the regulator valve, and wherein the recess sidewall second portion is non-linear for reflecting waves of the liquid away from the regulator valve,

(cl. 30) wherein the wave-breaker recess sidewall first portion faces but is separated from the annular sidewall to form a channel therebetween, and wherein the regulator valve is disposed in the channel,

(cl. 32) wherein the wave-breaker recess extends downwardly further from the periphery than does the regulator valve.

(Examiner notes the first face reads as the portion of the sidewall that is closest to and adjacent to the regulator valve. This sidewall first portion faces the annular sidewall looking

through the regulator valve, thereby creating a channel wherein the regulator valve is disposed therebetween.)

4. Claims 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Bryant '639.

Bryant '639 discloses a Baby Cup, comprising:

a top wall (15) having a generally circular periphery;

an annular sidewall (16) downwardly depending from the top wall periphery;

the lid including a drinking opening (18) formed adjacent to the periphery;

a wave-breaker recess (17) formed in the top wall having a sidewall that extends downwardly, wherein the wave-breaker recess sidewall includes a first portion facing toward the drinking opening and a second portion facing away from the drinking opening, and wherein the recess sidewall second portion extends across a center portion of the top wall and is non-linear for reflecting waves of the liquid away from the drinking opening,

(cl. 15) wherein the wave-breaker recess sidewall first portion faces but is separated from the annular sidewall to form a channel therebetween, and wherein the drinking opening is disposed in the channel,

(cl. 16) wherein the recess sidewall second portion has one of a convex and a concave shape.

Allowable Subject Matter

5. Claims 2-5, 9-13, 17, 20-23, 31, and 33-54 are allowed.

6. Claims 18-19 and 24-27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Applicant's arguments with respect to claims 14 have been considered but are moot in view of the new ground(s) of rejection.
8. Applicant's arguments filed 19 May 2003 have been fully considered but they are not persuasive.

Regarding the rejection of claims 1 and 28, Applicant argues there is no support for using a bisecting line to define "opposing" position. Applicant further argues the use of such reasoning renders meaningless the "ordinary and customary" meaning of the word oppose. Applicant further argues the degree of curvature of the sidewall of Waller '390 is relatively small.

Examiner notes claim 1 of the present application introduces, "a first sidewall structure downwardly depending from the lid adjacent the drinking opening and terminating in a first bottom wall." The "opposition" that exists, in the present application, between two apertures disposed on this sidewall is a result of the apertures being disposed on sidewalls that are separated by other sidewalls. The two sidewalls are parallel to each other, are facing each other, and, by having apertures formed thereon, a structure is created in which two apertures "oppose" each other. This is what the Examiner reads as, "direct opposition." Examiner notes the "sidewall" of the present application actually comprises four sidewalls, which are perpendicularly joined.

Examiner further notes the applicant claims "a first sidewall structure" in claim 1. It is therefore the burden of the Examiner to apply prior art disclosing apertures formed on "a first sidewall" that oppose each other. Examiner notes that all of the apertures of Waller '390 are disposed on one sidewall. By only reciting "a sidewall," the Examiner must locate art showing

opposing apertures on “a” sidewall. Examiner further notes claim 1 recites, “any of the plurality of apertures formed in the first sidewall structure are positioned in an opposing manner.” In order to meet this limitation, another definition of the word “oppose” must be employed; in this case, the definition is “to be on opposite sides of the sidewall,” a scenario which is clearly, “an opposing manner.”

Examiner arbitrarily selected a bisecting line to define the middle of the sidewall. Even without the bisecting line, one can reasonably argue that the apertures of Waller ‘390 that are located on the ends of the sidewall are on *opposite* ends of that sidewall, or, are on opposite ends of the middle of the sidewall. According to this logic, Washington, D.C. and New York City can be considered to be disposed on *opposite* sides of an arbitrary middle point; in this case, Philadelphia.

Examiner feels this is a reasonable interpretation of the word “oppose,” and further reads on the claimed limitation, “any of the plurality of apertures formed in the first sidewall structure are positioned in an opposing manner.”

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, email CustomerService3700@uspto.gov .

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (703) 605-4670. The examiner can normally be reached on M-Th 8-5:30, Alternate Fri 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

Other helpful telephone numbers are listed for applicant's benefit.

| | |
|---------------------------------|---------------------|
| Allowed Files & Publication | (703) 305-8322 |
| Assignment Branch | (703) 308-9287 |
| Certificates of Correction | (703) 305-8309 |
| Drawing Corrections/Draftsman | (703) 305-8404/8335 |
| Fee Increase Questions | (703) 305-5125 |
| Intellectual Property Questions | (703) 305-8217 |
| Petitions/Special Programs | (703) 305-9282 |
| Terminal Disclaimers | (703) 305-8408 |

If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

Information Help line 1-800-786-9199
Internet PTO-Home Page <http://www.uspto.gov/>

jns
June 3, 2003

Lee Young
LEE YOUNG
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700